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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/195,005	11/18/1998	BERND WILLING	MO-4861-HE-1	3843
7590	10/29/2003		EXAMINER	
PATENT DEPARTMENT BAYER CORPORATION 100 BAYER ROAD PITTSBURGH, PA 152059741			VALENZA, JOSEPH E	
			ART UNIT	PAPER NUMBER
			3651	

DATE MAILED: 10/29/2003

Please find below and/or attached an Office communication concerning this application or proceeding.

5W

<b>Office Action Summary</b>	Application No.	Applicant(s)
	09/195,005	WILLING, BERND
	Examiner	Art Unit
	Joseph Valenza	3651

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

#### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

#### Status

1) Responsive to communication(s) filed on 10 October 2003.

2a) This action is FINAL.                    2b) This action is non-final.

3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

#### Disposition of Claims

4) Claim(s) 7,8 and 10-12 is/are pending in the application.

4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.

5) Claim(s) \_\_\_\_\_ is/are allowed.

6) Claim(s) 7, 8 and 10-12 is/are rejected.

7) Claim(s) \_\_\_\_\_ is/are objected to.

8) Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

#### Application Papers

9) The specification is objected to by the Examiner.

10) The drawing(s) filed on \_\_\_\_\_ is/are: a) accepted or b) objected to by the Examiner.

Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

11) The proposed drawing correction filed on \_\_\_\_\_ is: a) approved b) disapproved by the Examiner.

If approved, corrected drawings are required in reply to this Office action.

12) The oath or declaration is objected to by the Examiner.

#### Priority under 35 U.S.C. §§ 119 and 120

13) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

a) All b) Some \* c) None of:

1. Certified copies of the priority documents have been received.
2. Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

14) Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).

a) The translation of the foreign language provisional application has been received.

15) Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

#### Attachment(s)

1) <input type="checkbox"/> Notice of References Cited (PTO-892)	4) <input type="checkbox"/> Interview Summary (PTO-413) Paper No(s). _____
2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)	5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)
3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449) Paper No(s) _____	6) <input type="checkbox"/> Other: _____

Art Unit: 3651

**DETAILED ACTION**

1. Claims 7, 8 and 10-12 are rejected under 35 U.S.C. 112 for the following reasons.

The claims 7, 8 and 10-12 are rejected under first paragraph, as indicated in the September 25, 2002 decision pages 5 and 6 by the Board of Appeals. The claims require "carrier cages" in line 7 of claim 7 and "coupling elements" in lines 12-14 of claim 7 which the Board considered to inadequately disclosed as stated on page 5 of the decision. The use of "first guide roller" in place of "detachable connection element" and "second guide roller" in place of "connecting element" that the Board of Appeals had determined in its September 25, 2002 decision were inadequately disclosed is not considered to overcome these problems. The problems discussed in the last five lines of page 5 of the decision have not been overcome.

Claims 7 and 8 are incomplete because the load dependent, friction drive has not been claimed to support the function "moved along" in line 28 of claim 7.

All claims are rejected under first paragraph because the friction drive will push the wagon on the insertion track into the gap between adjacent wagons on the chain in the loop at the corner of the oval. Those chain mounted wagons will crush the entering wagon as they move to the straight portion of the loop because no real void exists between them. There is no disclosure of any control system to only run the insertion drive at the appropriate time when a void approaches on the loop. Therefore the friction drive must run continuously and cause the previously mentioned feed problem.

All claims are rejected under first paragraph because there is no disclosure for a control system to operate the switches 27 at the correct time to divert the correct wagon and the correct roller 8 of said wagon to avoid wagon removal errors.

2. This is a request for continued examination of applicant's earlier Application No. 09/195,005. All claims are drawn to the same invention claimed in the earlier application and could have been finally rejected on the grounds and art of record in the next Office action if they had been entered in the earlier application. Accordingly, **THIS ACTION IS MADE FINAL** even though it is a first action in this case. See MPEP § 706.07(b). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no, however, event will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

3. Any inquiry concerning this communication should be directed to Joseph E. Valenza at telephone number (703) 308-2577. Amendments may be faxed to (703) 872-9306. My normal work week is Monday through Thursday.



JOSEPH E. VALENZA  
PRIMARY EXAMINER